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May 13, 2020

Via ECF

Hon. Robert W. Lehrburger, U.S.M.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Jose Mario Perez, Jr v. 33rd Street Investors I LLC and Wattle Cafe LLC.*;
Docket No. 19-cv-1392 (ALC)(RWL)

Dear Judge Lehrburger:

Parker Hanski LLC represents the plaintiff, Jose Mario Perez, Jr., in the above-entitled action. We write to advise the Court that the defendants refuse to participate in mediation via the Court-annexed Mediation Program as ordered by Your Honor on October 7, 2019 (ECF Dkt No. 29)¹. As the Court ordered the parties to attend a mediation in this matter by May 15, 2020, we respectfully ask the Court to compel defendants to promptly participate in the scheduling of a mediation date and to also promptly appear at the to-be-scheduled mediation (via Zoom²).

Although Your Honor ordered that the mediation occur by December 7, 2019, the defendants requested and obtained four extensions³ of the mediation deadline⁴. In the last extension request that Your Honor granted, which extended the mediation deadline to May 15, 2020 (ECF Dkt No. 44), defendant Wattle Café LLC stated that “the COVID-19 pandemic has complicated the parties’ efforts of conducting a mediation [but that it was] prepared to conduct a telephonic mediation, and remains committed to continuing negotiations to obviate the need for further Court intervention” (ECF Dkt No. 42). However, when the assigned mediator attempted

¹ The deadline to complete mediation was subsequently extended multiple times to the current deadline of May 15, 2020 (See ECF Dkt Nos. 31, 35, 37 and 44).

² Unless the current state of emergency has ended, and the courthouse is open for physical in-person appearances.

³ Defendant Wattle Café LLC sought a fifth extension, specifically a stay of all existing deadlines *sine die* (ECF Dkt No 45) which the Court denied (ECF Dkt No. 48).

⁴ While defendant 33rd Street Investors I LLC sought an extension of the mediation date to enable expert reports to be exchanged in advance of mediation (ECF Dkt No. 30), defendant Wattle Café LLC’s excuses for the needed extensions included: that it was “in the process of engaging substitute counsel” (ECF Dkt No. 34) yet substitute counsel never appeared; that its expert was “in the process of compiling its findings in the form of a written report [and that it will be] prepared to move forward with the mediation shortly after the written report is finalized” (ECF Dkt No. 36) yet the report was never provided; and that “the COVID-19 pandemic has complicated the parties’ efforts of conducting a mediation [but that it was] prepared to conduct a telephonic mediation, and remains committed to continuing negotiations to obviate the need for further Court intervention” (ECF Dkt No. 42) yet on May 8, 2020 it submitted another request seeking a stay of all existing deadlines (including the May 15, 2020 mediation deadline) *sine die* based on the misrepresentation that “the subject premises is not operating due to the COVID-19 pandemic” (ECF Dkt No. 45).

to schedule a mediation prior to the May 15, 2020 deadline⁵, the defendants failed to respond, and the assigned mediator advised the District's Mediation Office accordingly⁶.

Given the foregoing, plaintiff respectfully asks that the Court compel defendants to promptly participate in the scheduling and to also promptly appear at a mediation.

Thank you for your time and attention to this matter. With kindest regards, I am

very truly yours,

/s/

Robert G. Hanski, Esq.

⁵ The mediator specifically attempted to schedule the mediation on or before May 13, 2020 as she advised the parties by email dated April 21, 2020 that she was "not available after May 13, 2020."

⁶ On May 4, 2020, the mediator, Ms. Alfreida Kenny, emailed the District's Mediation Office the following: "Dear Mediation Office and Counsel, I am forwarding the e-mail trail regarding attempts to schedule a mediation session, which has not yet occurred. Counsel for plaintiff has responded that he is available at my convenience. Counsel for defendants have not responded. My calendar is filling-up. Currently, it now appears that May 12, 2020, may not be available." (Original formatting of email not retained).